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Air Liquide**Fax**

To: Examiner Wong, Leslie A.	From: Christopher J. Cronin
Fax: 703-872-9310	Date: August 28, 2003
Phone: 703-308-1979	Pages:
Re: U.S. Patent Application Serial Number 09/894,406	CC: Atty Dkt. 9584/48 S5725

☒ **Urgent** ☒ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

OFFICIAL COMMUNICATION

PLEASE DELIVER TO EXAMINER WONG

Dear Examiner Wong,

Please find enclosed a response in full reply to the election of species requirement of the Office Action dated July 28, 2003. If you have any questions, please do not hesitate to contact me at the number above.

Best regards,

Christopher J. Cronin

Reg. No. 46,513

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Attorney's Docket Number: S5725

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Applicants

Yuan, James T.C.

Serial No: 09/894,406

Filed: June 28, 2001

For: METHOD OF PRESERVING
AND DISINFECTING A FOOD
COMMODITY

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Examiner: Wong, Leslie A.

Group Art Unit: 1761

REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Thank you for the Office Action dated July 28, 2003, in which the Examiner indicated a requirement for election of species. Please enter the following reply and reconsider the Examiner's restriction requirement.

Remarks begin on page 2 of this paper.

Remarks:

In response to the requirement for election of species, Applicants provisionally elect, with traverse, liquid ozone for the antimicrobial agent, and nitrogen for the chilling gas. Applicants submit that each of claims 1-3, 11-13, and 15-27, are consonant with this election.

The Restriction Between Species Laid Out By The Examiner Is Improperly Made

With respect to the election of species required by the Examiner, Applicants assert that the Examiner has failed to meet the burden allowing her to properly require such a restriction according to U.S. P.T.O. practice.

Applicant does not take the position that any one species is not patentable over any other species. Applicant further does not waive any of his traversal rights with regard to this point.

Applicant respectfully asserts that the Examiner has not made a sufficient showing of an undue burden, so the requirement should be withdrawn.

Applicant points out that the claims of this application are properly classified in Class 426, subclass 335, and would further require a search in Class 426, subclass 335. Neither of these subclasses differentiates between the antimicrobial agents and chilling gases that the Examiner considers to be patentably distinct species. Thus, a search for one microbial agent would necessarily have the same scope as a search for any other of the antimicrobial agents from which the Examiner requires an election. Similarly, a search for one chilling gas would necessarily have the same scope as a search for any of the other chilling gases.

Moreover, Applicant respectfully asserts that search and examination for any one of seven antimicrobial agents within only two subclasses would not be an unreasonable according to U.S. P.T.O. restriction practice, much less such a search and examination of only three chilling gases.

In summary, Applicant traverses the Examiner's requirement election of species and respectfully request search and examination of all the claims.

Should the Examiner believe that a telephone call would expedite prosecution of the application, she is invited to call the undersigned attorney at the number listed below. It is believed that no further fee is due at this time. If that belief is found incorrect, the Commissioner is authorized to debit the assignee's deposit account 01-1375 for any fees necessary for a complete reply to the Office Action of July 28, 2003.

Respectfully submitted,



Christopher J. Cronin
Registration No. 46,513

Date: August 28, 2003

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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being facsimile transmitted to
to the U.S. Patent & Trademark Office at fax number 703-872-9310 on this 28th
day of August, 2003.



Christopher J. Cronin
Registration Number 46,513

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